

EXHIBIT B

CAUSE NO. 2021-48421

ANTHONY JONES	§	IN THE DISTRICT COURT
<i>Plaintiff</i>	§	
	§	
vs.	§	HARRIS COUNTY, TEXAS
	§	
KROGER TEXAS, LP	§	
<i>Defendant.</i>	§	165TH JUDICIAL DISTRICT

**DEFENDANT KROGER TEXAS L.P.'S
ORIGINAL ANSWER TO PLAINTIFF'S ORIGINAL PETITION**

COMES NOW Defendant Kroger Texas L.P., incorrectly named as Kroger Texas, LP ("Defendant"), in the above-entitled and numbered cause and files this Original Answer to Plaintiff Anthony Jones' ("Plaintiff") Original Petition and would respectfully show unto the Court as follows:

ORIGINAL ANSWER

I.

Defendant enters a general denial of all matters pleaded by Plaintiff and requests the Court to require Plaintiff to prove his charges and allegations by a preponderance of the evidence as required by the Constitution and the laws of the State of Texas.

II.

Defendant respectfully reserves the right at this time to amend this Original Answer to Plaintiff's allegations after it has had the opportunity to more closely investigate these claims, as is its right and privilege under the Texas Rules of Civil Procedure and the laws of the State of Texas.

III.

Defendant pleads the defenses to, and limitations on, punitive damages set out in Chapter 41 of the Texas Civil Practice & Remedies Code. Defendant asserts that the imposition of the

punitive damages sought by Plaintiff would violate Defendant's rights under the United States and Texas Constitutions, as more particularly set forth below:

An award of punitive damages would violate Defendant's right to due process and to equal protection as guaranteed by the Fourteenth Amendment to the United States Constitution and Article I, § 19 to the Texas Constitution:

- a. No provision of Texas law provides any adequate or meaningful standard or guide for fixing or determining or reviewing the amount of any award of punitive damages. Defendant has had no notice of or means of ascertaining the amount of the penalty he would or might be subject to for the conduct upon which the award ostensibly is to be based;
- b. Under the laws of the State of Texas, the determination of whether to award punitive damages is left to the arbitrary discretion of the trier of fact; there is no adequate or meaningful standard or guide for exercising that discretion;
- c. No provision of Texas law provides any adequate or meaningful standard or guide for determining the nature of the conduct upon which an award of punitive damages may be based. Defendant has had no notice of, or means of ascertaining, the nature of the conduct for which it might be held subject to a punitive damage award;
- d. No provision of Texas law provides adequate procedural safeguards, consistent with the criteria of *Mathews v. Eldridge*, 424 U.S. 319 (1976) for the imposition of an award of punitive damages;
- e. Due process requires, at a minimum, that punitive damages be awarded only upon clear and convincing evidence, and the law of the State of Texas provides for no such standard; and
- f. The very concept of punitive damages, whereby an award is made to a private Plaintiff not by way of compensation, but by way of a windfall incident to punishing a Defendant, represents the taking of property without due process. A punitive damage award would violate the prohibition against excessive fines contained in the Eighth Amendment to the United States Constitution, as embodied in the Due Process Clause of the Fourteenth Amendment to that Constitution, and Article I, § 19 of the Texas Constitution. See *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996).

**IV.
JURY REQUEST**

Pursuant to Rule 216 of the Texas Rules of Civil Procedure, Defendant requests a jury, and the appropriate fee is being filed along with this Answer.

**V.
PRAYER**

Defendant Kroger Texas L.P. respectfully prays that upon final hearing, judgment be entered that Plaintiff take nothing, that Defendant be discharged with its costs, and for such other relief to which Defendant may show itself justly entitled.

Respectfully submitted,

BAKER • WOTRING LLP

/s/ Earnest W. Wotring

Earnest W. Wotring

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**ATTORNEYS FOR DEFENDANT
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing was served on the following on August 20, 2021.

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/s/ Kimberly Dang
Kimberly Dang

Automated Certificate of eService

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